

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

C&I ENTERTAINMENT, LLC

PLAINTIFF

VERSUS

CAUSE NO. 1:08CV16-M-D

**FIDELITY & DEPOSIT COMPANY
OF MARYLAND**

DEFENDANT

AGREED ORDER

THIS MATTER came before the Court on the Motion of Fidelity & Deposit Company of Maryland (“F&D”) to Stay and the Court, being advised that the parties have reached an agreement, hereby finds as follows:

1. On August 7, 2001, Ralph McKnight & Son Construction, Inc. (“McKnight”) entered into a contract with C&I Entertainment, LLC (“C&I”) for the construction of a theater/skating rink located in Kosciusko, Mississippi (the “Project”). McKnight was required by C&I to obtain performance and payment bonds and obtained these bonds from F&D. F&D issued a performance bond, Bond No. 8642169, naming McKnight as Principal and C&I as obligee in connection with the Project.

2. After completion of the Project, disputes developed between C&I and McKnight regarding the quality of McKnight’s construction and warranty work. C&I withheld final payment, prompting McKnight to file a lawsuit against C&I on August 29, 2003 (the “State Court Action”).¹

¹ The State Court Action is styled Ralph McKnight & Son Construction, Inc. v. C&I Entertainment, LLC, in the Circuit Court of Attala County, Mississippi, Cause Number

3. On March 2, 2005, C&I filed a counterclaim against McKnight for alleged construction defects.² C&I's counterclaim named three causes of action: Breach of Contract, Breach of Duty of Good Faith and Fair Dealing, and Negligent Construction/Breach of Workmanship by McKnight.

4. On January 18, 2008, C&I filed suit against F&D in the Circuit Court of Attala County, Mississippi alleging breach of contract and bad faith denial of a claim, and F&D timely removed the action to the District Court for the Northern District of Mississippi (the "Federal Court Action").

5. On February 21, 2009, F&D filed a Motion to Stay the Federal Court Action pending the outcome of the State Court Action.

6. All parties to this Federal Court Action agree to a stay of the Federal Court Action until the State Court Action is resolved. Further, all parties agree to be bound by the decision of the Circuit Court of Attala County regarding the construction contract between C&I and McKnight, specifically whether or not McKnight defaulted on the construction contract it entered into with C&I for the Project. It is the purpose of the parties to not relitigate the construction issues, but litigate and preserve the surety issues and defenses.

7. It is specifically agreed that F&D preserves, and has not waived, any and all surety defenses available to it.

IT IS HEREBY ORDERED AND ADJUDGED THAT this action between

03-195-C-V-L.

² McKnight has denied that its work was defective or that it is liable to C&I. F&D adopts its principal's position of non-liability.

Fidelity and Deposit Company of Maryland and C&I Entertainment, Inc. is stayed pending the outcome of the action between Ralph McKnight & Son Construction, Inc. and C&I Entertainment, Inc. currently pending in the Circuit Court of Attala County, Mississippi.

This the 30th day of March, 2009.

/s/ MICHAEL P. MILLS
CHIEF JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI

AGREED TO BY:

/s/ Ellie B. Word
Ellie B. Word
Attorney for Fidelity and Deposit
Company of Maryland

/s/ Todd Murrah
Todd Murrah
Attorney for C&I Entertainment, LLC